



Minnesota Department of Human Services

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November 27, 2013

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Legislative Coordinating Commission

Michele Timmons, Revisor of Statutes

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Senate Health and Human Services Committee

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Representative Jim Abeler, Republican Lead
House Health and Human Services Finance Committee

Representative Tina Liebling, Chair
Representative Tara Mack, Republican Lead
House Health and Human Services Policy Committee

**Re: Annual Report from Minnesota Department of Human Services on Obsolete,
Unnecessary, or Duplicative Rules, as Required by Minnesota Statutes, section 14.05,
subdivision 5**

Minnesota Statutes, section 14.05, subdivision 5, states:

“By December 1 of each year, an agency must submit to the governor, the legislative coordinating commission, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, a list of any rules or portions of rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules. By December 1, the agency must either report a timetable for repeal of the rule or portion of the rule, or must develop a bill for submission to the appropriate policy committee to repeal the obsolete, unnecessary, or duplicative rule. Such a bill must include proposed authorization to use the expedited procedures of section 14.389 to repeal or amend the obsolete, unnecessary, or duplicative rule. A report submitted under this subdivision must be signed by the person in the agency who is responsible for identifying and initiating repeal of obsolete rules. The report also must identify the status of any rules

identified in the prior year's report as obsolete, unnecessary, or duplicative. If none of an agency's rules are obsolete, unnecessary, or duplicative, an agency's December 1 report must state that conclusion."

The Department of Human Services has identified the following rules as obsolete.

Minnesota Rules, part 9505.0340, subpart 3, items A, C, I; and subparts 6 and 7. The rule governs payment for pharmacy services under the medical assistance program; billing procedures for these services; and maximum payment for prescribed drugs. The provisions of subpart 3, items A, C and I, and subpart 7 are obsolete because these have been superseded by the requirements of Minnesota Statutes, section 256B.0625, subdivision 13. The statutory section generally governs covered medical services, and the particular subdivision addresses the list of drugs included in the medical assistance formulary and establishes the maximum dispensed quantity of a drug, the dispensing fee, and the reimbursement rate. Rule provisions that conflict with the statutory requirements require repeal. Part 9505.0340, subpart 6 is also obsolete because it addresses the steps to take when a national drug code is not printed on the manufacturer's container. However, because a code is now stated on all manufacturer products, medical assistance would not cover any pharmaceutical without the code, so the provision is obsolete. The Department plans to repeal these provisions using the exempt or obsolete rulemaking process under Chapter 14.

Minnesota Rules, part 9505.5010, subparts 1 and 3. Part 9505.5010 governs the provider requirements for obtaining prior authorization under the medical assistance and MinnesotaCare programs. Subparts 1 and 3 refer to a specific DHS form that is no longer in use, and the references therefore need to be updated. Because the rule amendment requires a language change in addition to repeal, the Department will amend the rule in 2014 using the conventional rulemaking process under Chapter 14.

Status of Rules Identified for Repeal in 2012 Report.

Minnesota Rules, parts 9500.1090; 9500.1100, subparts 9, 20, 22, and 29; 9500.1121, subpart 1; 9500.1123; 9500.1127, subparts 1 and 2; 9500.1128, subpart 2; and 9500.1129, subpart 1. The rule refers to a program that no longer exists. Chapter 9500 of Minnesota Rules governs assistance payments programs. Parts 9500.1090 to 9500.1140 previously established a prospective payment system for inpatient hospital services provided under the medical assistance and general assistance medical care programs. The chapter also contains a number of references to general assistance medical care, a program that is no longer funded. These references therefore need to be removed. The Department has prepared a bill for the 2014 legislative session to repeal the obsolete provisions about the prospective payment system. In 2014, the Department will explore removal of obsolete references to GAMC with the Revisor's office.

Minnesota Rules, parts 9502.0325, 9502.0341, 9502.0405, and 9502.0435. Provisions conflict with statute. The cited provisions govern family child care. Certain provisions in Minnesota Statutes, Chapters 245A (the Human Services Licensing Act) and various other statutory provisions, including section 144.414 governing posting of a notice about smoking, and 169.685 regarding child passenger restraint systems, conflict with rule. The Department has commenced use of the exempt process

established under Minnesota Statutes, section 14.388 to update these rules, and expects to complete the amendments in 2014.

Minnesota Rules, part 9555.6145, subparts 1 and 2. The rule contains language redundant with statute. The rule parts define negative actions (licensing sanctions) and procedures for negative actions. The Human Services Licensing Act in Minnesota Statutes, Chapter 245A contains complete provisions for license sanctions. The Department will repeal the provisions in 2014 using the obsolete process established at section 14.3895.

Minnesota Rules, parts 9543.0050, subpart 3, and 9543.0060, subpart 5. The rule parts contain language inconsistent with statute regarding a request for a capacity variance for foster care and the reference to an “annual” licensing report. After the first year of licensure, the license can now be granted up to two years, requiring that the word “annual” be repealed. The Department will repeal the obsolete rule language in 2014 using the obsolete repeal process established at section 14.3895.

Minnesota Rules, parts 9505.0015, subpart 16; 9505.0501; 9505.0505, subparts 3, 13, 16, 27, 30, 31 and 32; 9505.0515; 9505.2165, subpart 8; 9505.5000; 9505.5005, subparts 7, 10, 12, 16, and 17; 9505.5010, subpart 1; 9505.5030; 9505.5035, subparts 1 and 2; 9505.5045; 9505.5076, subpart 1; 9505.5200; 9505.5210, subparts 5 and 7; and 9505.5305, subpart 13. The Department has identified obsolete statutory and rule references to general assistance medical care, for which funding was discontinued in 2009. The Department plans to explore with the Revisor’s Office in 2014 whether that office could make these changes within the scope of its editorial authority.

Minnesota Rules, part 9505.2240, subpart 1, item B. A process described in the rule is not in use. The rule part describes how the department notifies the general public about action taken regarding a vendor when the department’s investigation under the Surveillance and Integrity Review Program determines the presence of fraud, theft, abuse, or error in connection with a program, or if the vendor refuses to grant access to records as required. The language in item B states that the department will do so “by publishing the notice in a general circulation newspaper in the geographic area of Minnesota generally served by the vendor in the majority of its health services to Minnesota program recipients.” Repeal of the obsolete rule language using the obsolete repeal process established at section 14.3895 is in process and will be completed early in 2014.

Minnesota Rules, part 9505.5005, subpart 9. A process described in the rule is not in use. The rule part contains definitions that relate to parts governing conditions of payment to providers of health services for recipients of medical assistance. Subpart 9 defines investigative, which describes health treatments that are largely untested and not widely used. Previously, the Department relied on determinations made by the National Blue Cross and Blue Shield Association Medical Advisory Committee that were used by BCBS Minnesota in its program administration to determine what treatments met the rule criteria for an investigative treatment. The advisory committee no longer exists and the practice is no longer being used. The Department is evaluating its options about how the rule will best govern these determinations now, and will proceed with a rule amendment using the conventional rulemaking process in 2014.

9506.0100, subparts 3, 7, 12, and 16; 9506.0020, subparts 1, 2, and 7; 9506.0030, subparts 2 and 3; 9506.0050; 9506.0060, subpart 1; 9506.0080, subpart 2; 9506.0090, subpart 1; and 9506.0200,

subpart 2. A number of provisions are no longer consistent with statute. Minnesota Rules, Chapter 9506 governs MinnesotaCare. Statutory changes in 1998 and 2003 amended or repealed some definitions, so that definitions which no longer conform to statute should be repealed. Some eligibility requirements in the rule are outdated because they are based on MinnesotaCare when it was state-funded, prior to federal financial participation; and other parts conform to previous versions of MinnesotaCare, before changes made by the 1998 and 1999 Legislatures. The Department will repeal the provisions no longer consistent with statute in 2014, using the obsolete process established at section 14.3895.

Minnesota Rules, part 9535.2000 to 9535.3000. The processes and requirements are no longer in use. The rule governed the granting and use of funds to pay for residential services for adults with mental illness. The funding grants for these services have been transferred to an integrated fund. As a result, the county processes and requirements associated with these dollars are no longer applicable. In 2014, the Department will repeal the obsolete rule using the obsolete repeal process established at section 14.3895.

Minnesota Rules, parts 9555.7400 and 9555.7500. Rule provisions are either redundant or conflict with governing statute. These rule parts govern protective services to vulnerable adults. Part 9555.7400 is obsolete because it addresses emergency protective services, which is now governed by the Vulnerable Adult Act, Minnesota Statutes, section 626.557, subdivision 10. Part 9555.7500 is obsolete because it references timelines for classification of complaints that are now governed by the Vulnerable Adult Act. The Department will determine whether to use the obsolete repeal process established at section 14.3895, or the exempt process established at 14.388, and pursue the amendment in 2014.

Minnesota Rules, part 9560.0450, subpart 2. Requirements described in the rule are inconsistent with statute or current practices. Minnesota Rules, part 9560.0410, et seq., govern the administration of local agency responsibilities for children under state guardianship in need of protection or services. Part 9560.0450 governs the authority delegated to local agencies or reserved to the commissioner to grant consents on behalf of children under state guardianship. Recent child welfare legislation changed statute so that the commissioner is no longer required to consent to adoptions or sibling separations for children under guardianship because these functions are now performed by the court. Further, some items for which the commissioner previously granted consent have become outmoded and no longer in current use. Use of the conventional rulemaking process to both repeal and replace outdated language is underway; the Department recently met with an advisory committee to evaluate proposed changes.

Minnesota Rules, part 9560.0020, subparts 3 and 3a; 9560.0030 to 9560.0060; 9560.0110; 9560.0160; 9560.0180; 9560.0460; 9560.0470; 9560.0475; and 9560.0485. Provisions are either redundant with statute, or rendered obsolete by statute. Minnesota Statutes, Chapters 259 and 260C, govern adoption, and juvenile safety and placement, respectively. Both contain a number of policy provisions that are consistent with current best practices, such as addressing the best interests of a child in foster or residential care, and preserving a child's connections. These statutory chapters also expressly set forth requirements for operating the State Adoption Exchange; family recruitment methods; and post-adoption services. Minnesota Rules, Chapter 9560, governs social services for children, including the Minnesota adoption program, protective services for children, and interstate placement of children for foster care. The Department will repeal the obsolete provisions in 2014 using the obsolete repeal process established at section 14.3895.

If you have any questions about this report, please call me at (651)431-4336.

Sincerely,

A handwritten signature in cursive script that reads "Beth Scheffer".

Elizabeth Scheffer
Administrative Law Manager
Appeals and Regulations Division